IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9027 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DHANUBEN WD/O HASMUKHBHAI GOVINDBHAI & 3 - Petitioners

Versus

STATE OF GUJARAT & 1 - Respondents

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Appearance :
MR DHIRENDRA MEHTA for Petitioners.
MR KT DAVE, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 12/01/2007
ORAL JUDGMENT

1. The petitioners have filed this petition under Article 226 & 227 of the Constitution of India challenging the legality and validity of the impugned order dated 10.12.1997 passed by the learned Additional Chief Secretary (Appeals), Revenue Department, Gujarat State in Revision Application No. SRD/BKP/ST/2/91 on the ground that the said order was not only ex-facie illegal, unjust and improper but also violative of the settled legal position of law and also violative of the well settled principles of natural justice. The petitioners have also challenged the orders passed by the learned Collector, Surat dated 30.10.1990 in Land Appeal No. 121 of 1990 and also the order dated 23.07.1990 passed by the Assistant Collector, Olpad Prant, Surat fixing the amount of premium over the lands in question.

2. The brief facts giving rise to the present petition are that the petitioners are the legal heirs and representatives of deceased Hasmukhbhai Govindbhai Patel, the land owner and occupier of the land bearing Block No. 776/B admeasuring about Acres 20.06 Gunthas situated at village Kudsad of Olpad Taluka in Surat District. The said land was converted into N.A. land by order dated 29.03.1982 passed by the Taluka Development Officer, Olpad and permission was granted for construction of the residential houses over the lands in question. The mutation entry No. 3935 dated 20.04.1982 was entered into the revenue records in respect of the said order. The land in question was sold out to one Regd. partnership firm, namely, Satellite Township Corporation under Regd. Sale Deed dated 17.08.1982 and accordingly, the said sale transaction was entered into the revenue record.

3. It is also the case of the petitioners that the land in question was labelled as new tenure land in village Form No. 7/12, though the revenue records do not

correctly reflect that how and when and where from the land in question was changed into the new tenure land from the old tenure land. It is revealed from the revenue records of the year 1895 that the lands were bearing different Survey Nos. 3, 4, 41, 50, 53, 54 & 73 and on the revision of survey settlement, survey numbers were changed and even thereafter at the time of consolidation of Holdings Act, Block No. 1/A and 1/B were given and even thereafter, when the village Saliabad and village Kudsad were consolidated, the land in question was given Block No. 776/B and all the relevant entries were recorded in village Form No. 6. At no point of time, the said village form reveals that the land in question is of new tenure land. However, while granting N.A. permission, the T.D.O., Olpad fixed the premium for granting N.A. permission and accordingly, the said premium was paid up by the land owners.

4. It is also the case of the petitioners that the authority and power to grant N.A. permission and also fixing

the amount of premium was given to T.D.O. in the State of Gujarat and the said powers were withdrawn vide Government Resolution dated 16.10.1982. The order of the T.D.O. granting N.A. permission for the land in question was, therefore, quite proper and also the power to fix the premium was within his competence. The Deputy Collector, Olpad Prant, however, in exercise of suo-motu powers to take the order of N.A. permission in revision, issued a notice dated 01.02.1983 which was replied on 09.02.1983 and ultimately, after withdrawing his notice, under his order dated 20.06.1984, he has referred the matter to the Secretary (Appeals) to take the same in suo-motu revision under Section 211 of the Bombay Land Revenue Code. The Secretary (Appeals), in turn, issued show-cause notice dated 30.06.1984 to the petitioners. Written submissions dated 13.07.1984 were filed by the petitioners in response to the said show-cause notice. The Secretary (Appeals) vide his order dated 16.07.1984 modified the order dated 29.03.1982 by setting aside one of the conditions in

respect of fixation of the amount of premium and remanded the matter back to the Collector, Surat for fixation of the amount of premium afresh.

5. It is also the case of the petitioners that the controversy with regard to the nature of the land in question was required to be determined and decided and hence, all the evidence along with the written submissions were produced before the learned Collector on 12.04.1988 in response to his letter / notice dated 13.01.1988. The Collector has asked the Deputy Collector to take a decision in the matter and accordingly, the Deputy Collector vide his order dated 20.06.1990 fixed up the amount of premium to the tune of Rs.63,36,046.50/-. The said order of the Deputy Collector was carried in appeal before the Collector and the Collector, Surat vide his order dated 30.10.1990 remanded the matter to the Assistant Collector, Olpad Prant with a direction to get the amount of premium fixed by the Deputy Town Planning Officer. The petitioners challenged the said order by way of revision to the learned

Secretary (Appeals) who vide his order dated 10.12.1997 rejected the said revision application and that order is under challenge before this Court while invoking the writ jurisdiction of this Court under Article 226 & 227 of the Constitution of India.

6. It is also the case of the petitioners that during the pendency of the revision application before the learned Secretary (Appeals), the original land owner i.e. Hasmukhbhai Govindbhai Patel expired and his legal heirs and representatives were brought on record who also executed the power of attorney in favour of Shantilal Girdharlal Merchant, who happened to be a partner of Satellite Township Corporation, purchaser of the land in question. After the land in question was sold to this partnership firm, number of plots were made in the land in question and all the plots were sold out by the said partnership firm and accordingly, purchasers have proposed to form Society, namely, Gandhinagar Vasahat Co-operative Service Society, for the construction of the residential dwelling units over

the lands in question. However, in the larger interest of all the members of the said Society and/or of the purchaser of the plots, made over the land in question, the petitioners have filed the present petition challenging the aforesaid orders before this Court.

7. The petition was admitted and Rule was issued on 20.12.1999. By way of an interim relief, this Court has directed that during the pendency of the petition, it would be open to the respondent authorities to determine the amount of premium as directed by the Special Secretary. The Court has also made it very clear that no recovery shall be effected and the amount in respect of original Survey No. 73 shall be determined separately. It appears that pursuant to this direction, no amount of premium has been determined so far.

8. Mr. Dhirendra Mehta, learned advocate appearing for the petitioners has submitted that the respondent authorities have committed serious error in law and

on fact in considering the land in question to be of new tenure land only on the strength of village form No. 7/12, without verifying the entire revenue records. The land in question was never of the new tenure land as no Kabulat was ever recorded. Without properly verifying the nature and tenure of land in question, the respondent authorities have assumed the land in question to be of new tenure and charged the amount of premium on conversion of tenure while granting N.A. Permission. Mr. Mehta has further submitted that merely by recording the words “new tenure” in village Form No. 7/12, the land does not become the new tenure land. He has further submitted that the land in question was ancestral land and no evidence is there in revenue records for conversion of the land in question in new tenure and there was also no evidence with regard to imposition of any condition over the land in question and no Kabulat was also found to that effect.

9. Mr. Mehta has further submitted that the impugned

order fixing the amount of premium and insisting for its recovery is based on the assumption that the land in question is of new tenure while the basic question still remains to be considered and, therefore, the order is required to be interfered with by this Court in exercise of its writ jurisdiction. Even assuming that the land in question is of new tenure land, then also as per the guidelines issued under G.R. dated 24.11.1970, no premium can be charged or levied for the lands held and occupied since the time of the old States.

10. Mr. Mehta has further submitted that no specific particulars with regard to old revenue records were found on record when Assistant Collector asked for more details from the office of the Superintendent, Gujarat State, Archeology Department, South Circle, Vadodara. Without properly verifying the old records and source of recording new tenure in village Form No. 7/12, the land in question was assumed and believed to be of new tenure and the amount of premium was fixed, which is nothing, but illegal and

beyond the scope, jurisdiction and power of the learned Assistant Collector.

11. Mr. Mehta has further submitted that the respondent authorities have failed to appreciate that the T.D.O. was empowered under G.R. dated 20.05.1980 to grant N.A. permission and also to fix up the amount of premium. The premium so fixed by the T.D.O. at the time of granting N.A. permission could not, therefore, be said to be unauthorised or illegal as the said powers to grant the N.A. permission were withdrawn vide G.R. dated 16.10.1982 after the order granting N.A. permission was passed and hence, entire exercise is nothing but futile exercise of the order passed in suo-motu revision. The power exercised for granting N.A. permission and fixing he premium by the T.D.O. was valid upto the date of withdrawal of the said powers by G.R. dated 16.10.1982.

12. Mr. Mehta has further submitted that the respondent authorities have failed to appreciate that

there was no control of the petitioners over the land in question as the possession of the land in question was already handed over firstly to the Satellite Township Corporation under Regd. Sale Deed and after making number of plots over the land in question, it has been sold out to different persons who proposed to form Co-operative Society for the construction of dwelling units for the residential purpose. He has, therefore, submitted that to protect the larger interest of all the persons who are now the owners of the land in question on their respective plots, no further proceedings for fixation of the amount of premium by Deputy Town Planner is required and impugned order ought not to have been passed while exercising the revisional power beyond the reasonable period.

13. Mr. Mehta has alternatively submitted that even if the land in question is treated to be new tenure land and premium is to be determined, in that case, the premium is required to be paid on the market value of the land on the date of making such application

for conversion of land in to N.A. land. In support of this submission, he relied on the decision of this Court in the case of **Vallabhbhai Lakhmanbhai Patel (Decd.) through heir V/s. State of Gujarat, XLVII (3) G.L.R. 2516** wherein it is held that it is the date of the application which may have the relevance qua prevailing price and not the prevailing price in the year when the order is passed. . Mr. Mehta has further relied on the decision of this Court in the case of **Bharatbhai Kantilal Jethwa V/s. State of Gujarat and Others, 2006 (2) G.L.H. 303** wherein it is held that whenever the valuation of the land is fixed by the concerned authority, the opportunity of being heard ought to have been provided to the person who is made liable to make the payment of the money. The fixation of market value, of any land, is a complex phenomena. Always the appellant should be heard so that he will have an opportunity to provide latest value of the lands situated in the near vicinity for arriving at correct market price of land in question.

14. Mr. Mehta has, therefore, submitted that the impugned orders are required to be quashed and set aside and the necessary direction may be issued to fix up the amount of premium on the date of application.

15. Mr. Mehta has further relied on the decision of this Court in the case of **Minaben Arvindlal Gandhi V/s. State of Gujarat and Others, XXXIII (1992) (1) G.L.R. 413** wherein it is held that from the text of Sec. 157 of the Panchayat Act, it becomes clear that the power to grant permission for non-agricultural use which is otherwise conferred on Collector by Section 65 of the Bombay Land Revenue Code could be transferred under Section 157 by the State Government to the District Panchayat and in fact by the Resolution of 1963 said power is transferred to all the District Panchayats. By subsequent resolution of the very date, the District Panchayat is further empowered to delegate such

powers to grant permission for non-agricultural use to any sub-ordinate Panchayats. After examining the position of law as emerging from conjoint reading of Section 65 of the Code read with Section 157 of the Gujarat Panchayats Act and also various resolutions issued by the State with respect to the new tenure / restricted tenure lands and more particularly on the facts of that case, the Court's opinion is that it cannot be said that there was total absence of jurisdiction / power in the Taluka Development Officer to grant permission for non-agricultural use. In fact from the G.R. dated 20.05.1980 and subsequent resolution dated 16.10.1982 clear position emerges that Taluka Development Officer has power to grant permission for non-agricultural use even with respect to new tenure or restricted tenure lands subject to conditions that the amount of premium payable by the applicant shall be determined by the Collector / Deputy Collector or Revenue Officer and such amount of premium is made payable by the applicant as a condition to grant of permission for non-agricultural use. The

Court in that case has, therefore, come to the conclusion that the Taluka Development Officer has undoubted power to grant permission for non-agricultural use under Section 65 of the Code and Resolution dated 16.10.1982 does not take away such power. It simply conditions the said power by providing that the amount of premium shall be determined by the Collector / Deputy Collector or Revenue Officer. This flaw in the order of the T.D.O. dated 04.01.1982 is not fatal so as to render entire order *non-est*. The Court, therefore, quashed and set aside the said order cancelling the permission for non-agricultural use granted by the T.D.O. and remanded the matter to the T.D.O. with direction that he shall refer the matter to the Collector / Deputy Collector / Revenue Officer for fixing the amount of premium to be paid by the respondents after ascertaining such amount of premium, the T.D.O. shall suitably modify his order so as to refix the amount of premium.

16. Mr. Mehta has further relied on the decision of this

Court in the case of **Chhotabhai Dahyabhai Thakore V/s. State of Gujarat and others, 1997 (4) GCD 13 (Guj.)** wherein it is held that it is a case where the respondents have not given out any explanation, good, bad or indifferent, for delayed initiative action against the petitioner. So, the delay coupled with the fact that the land has been mutated in the name of the petitioner in the year 1973, and further that in the revenue record only the words 'new tenure' are mentioned, suggests that the action initiated against the petitioner cannot be allowed to stand. The Court, therefore, quashed and set aside the orders with a direction to determine the amount of premium which is payable by the petitioner due to the transfer of the land in his favour within a period of three months from the date of receipt of certified copy of the said judgment and order and the petitioner was held to be under an obligation to pay the amount so determined, immediately on receipt of demand from the Collector. The Court has also made it clear that the petitioner would not be

allowed to retain the amount of premium which he has to pay for transfer of the land in question which was new tenure land.

17. Mr. Mehta has further relied on the decision of this Court in the case of **Bhikhabhai Maganbhai Patel V/s. State of Gujarat and others, 2000 (3) G.C.D. 1878 (Gujarat)** wherein while allowing the petition and quashing the impugned order, the Court has directed the respondent authorities to consider the question of valuation again as per the market rate which was prevailing in February 1992 with regard to the adjacent land and any other relevant factors as may have been obtained in 1992.

18. Mr. K.T. Dave, learned Assistant Government Pleader appearing for the respondents, on the other hand, has supported the case of the respondents and submitted that there is concurrent finding of all the authorities below which cannot be interfered with while exercising powers under Article 227 of the

Constitution of India. He has referred to and relied upon the affidavit-in-reply filed on behalf of respondent No. 2. The T.D.O., Olpad by his order dated 29.03.1982 granted N.A. Permission to the original land owner, late Shri Hasmukhbhai Govindbhai Patel and since the said land was of new tenure, he has directed the land owner to deposit Rs.33,247.50 ps. by way of premium and the said amount has already been deposited by the land owner on 29.03.1982. Since the said land was of new tenure land and since the same has been transferred without permission of the competent authority, the Deputy Collector, Olpad Prant, Surat took up the matter in revision, but as the order of T.D.O. granting N.A. Permission cannot be taken into revision by him under Section 211 of the Bombay Land Revenue Code and the power of revision is vested with the State Government, the Deputy Collector, Olpad Prant, Surat by his order dated 18.06.1984 withdrew the said notice and the case papers were sent to the Secretary, Revenue Department (Appeals), Ahmedabad to take the said

matter in revision. The Secretary, Revenue Department vide his order dated 16.07.1984 confirmed the order of the T.D.O. With regard to the nature of the land in question and cancelled the order with respect to the amount of premium and directed the Collector to decide the amount of premium of the said land. The Collector, vide his order dated 25.04.1988 directed the Deputy Collector, Olpad Prant, Surat to decide the amount of premium and he was further directed to decide the type of the new tenure of the said land and pursuant to that, the Assistant Collector, Olpad Prant, Surat inquired about the same through the Mamlatdar and price was fixed by the Deputy Town Planner, Surat and after taking into consideration all aspects, the amount of Rs.111/- per Sq. Mtr. was fixed and in pursuant to that, for the land admeasuring about Acre 20.06 Gunthas, the premium was fixed at 70% i.e. Rs.63,36,046.50 ps. and since the petitioners already deposited Rs.33,247.50 ps., they were directed to deposit the balance amount of Rs.63,02,799/- and if the

petitioners failed to deposit the said amount, the necessary actions were to be taken in accordance with the provisions contained in the Bombay Land Revenue Code. The said order was challenged in appeal before the Collector who partly allowed the appeal vide his order dated 30.10.1990 and directed the Assistant Collector, Olpad Prant, Surat to decide the same afresh fixing price of the said amount through the Deputy Town Planner, Surat on the date of N.A. permission i.e. 29.03.1982. Though the matter has been sent to the Deputy Collector, Olpad Prant for fresh decision, the petitioners, instead of approaching the Deputy Collector, Olpad Prant, Surat, have preferred revision application before the Additional Chief Secretary (Appeals) and the Additional Chief Secretary (Appeals) rejected the said revision application vide his order dated 10.12.1997 and confirmed the order of the Collector, Surat dated 30.10.1990. He has, therefore, submitted that the respondent authorities have considered all the aspects and thereafter decided the matter and, therefore, at this stage, the Court should

not interfere with the orders and the petition be dismissed.

19. Mr. Dave has further submitted that the petitioners have not produced any evidence or proof to show that the land in question was of old tenure land inspite of sufficient opportunities were given to them. He has further submitted that it is clearly revealed from the village entry No. 7/12 that during the period of 1928-29 to 1945-46, the land in question is of new tenure. There is no definition of the word “new tenure” either in the Bombay Land Revenue Code or in the Rules. By introducing Sections 68 & 73 in the Bombay Land Revenue Code type of authority in the land or the power of holding in the land has been stated. The land may be either un-alienated or alienated or may be of both nature. Before 1901, the lands of survey tenures were given with stipulated conditions by considering all the lands of old tenure lands, the limited or restricted rights would be whether necessary to be given has been stated under Section 68 of the Bombay Land

Revenue Code wherein rights of the occupants are considered. He has, therefore, submitted that the land in question as per Section 68 & 73 of the Bombay Land Revenue Code are of restricted type of authority / powers and on that basis, decisions were taken and the said decisions are legal and valid and in accordance with the rules and regulations. The G.R. dated 24.11.1970 may not be made applicable to the case of the petitioners.

20. Mr. Dave has further submitted that as per G.R. dated 20.05.1980 issued by the Revenue Department, the rate of premium shall be decided by the Officer who gives permission for the non-agricultural use as per the prescribed rate. Thereafter, from 16.10.1982, modification has been made whereby the amount of premium is to be determined by the Revenue Officers at prescribed rate and the same has to be recovered as per the order of condition. The power to give permission for the non-agriculture use of the land in the area of Panchayat is with the District / Taluka Panchayat

and the determination of the land of premium is to be made by the District Collector or Assistant or Deputy Collector is the change in the resolution. As per the Resolution dated 16.10.1982, the T.D.O. who determined the amount of premium which powers are not within his purview and it is beyond his authority. He has, therefore, submitted that only with a view to determine the amount of premium, the impugned order has been quashed by the Collector on 02.05.1984 and the same is legal and valid and within the powers conferred upon the Collector.

21. Mr. Dave has further submitted that there was no representation or submission of the land owner that the land is not of new tenure till the amount of premium has been determined and decided. No evidence on the basis of the record has been produced by the petitioners to show that the land is of old tenure. As per the record, the land in question is being continued as new tenure land since year 1922-23 and there was no objection or dispute raised by the owner of the land for a long period of time to

point out that it is of old tenure before any of the competent authorities. He has, therefore, submitted that only with a view to avoid the amount of premium, the petitioners have raised by different means, false claims which cannot be entertained by this Court. Mr. Dave has further submitted that even otherwise, the order of the Collector was very clear. He has directed to determine the amount of premium. Against this order, revision has been rightly rejected by the Secretary (Appeals) and that order does not deserve for any interference by this Court while exercising the writ jurisdiction. He has, therefore, submitted that the petition may be dismissed.

22. After having heard learned advocates appearing for the respective parties and after having gone through the pleadings of the parties and the authorities relied upon by them, the Court is of the view that there is no question of forfeiture of land as the learned T.D.O. has exercised the power vested in him while granting N.A. Permission in respect of the

land in question. Subsequent to such permission, the land was sold and further sub-plottings of the land were made. The whole controversy arose only when the exorbitant amount of premium was charged. It is true that as per the decision of this Court in the case of **Minaben Arvindlal Gandhi V/s. State of Gujarat and Others, 1992 (1) G.L.R. 413** (*Supra*), the T.D.O. has no power to determine the amount of premium and yet the premium amount was determined and was also paid by the petitioners. It therefore becomes clear that the petitioners have never challenged the land to be treated as new tenure land. The Court, therefore, is not inclined to accept the submissions of the petitioners to the effect that the land in question is of old tenure land.

23. As far as the petitioners' challenge to the amount of premium is concerned, the learned Collector, Surat vide his order dated 30.10.1990 remanded the matter to the Assistant Collector, Olpad Prant with a direction to get the amount of premium fixed by the

Deputy Town Planning Officer. When this order was challenged by way of revision to the learned Secretary (Appeals), he has considered the entire facts and circumstances of the case and rightly taken the view vide his order dated 10.12.1997 that when the matter was remanded for determination of the amount of premium, no interference is required in the order of the Collector. When this order of the revisional authority is challenged before this Court under Article 226 & 227 of the Constitution of India, this Court is of the view that since the petition is only against the order rejecting Collector's order remanding the matter to the Deputy Collector for determination of premium, it is not just and proper for this Court to disturb the said order of the revisional authority.

24. As a matter of fact, while admitting this petition, the Court has also directed the respondent authorities to determine the amount of premium. The judgments referred to by Mr. Mehta in the case of **Chhotabhai**

Dahyabhai Thakore V/s. State of Gujarat and others, 1997 (4) GCD 13 (Gujarat) (*Supra*) also takes the same view. The Court, therefore, does not find any infirmity in the order passed by the revisional authority. Since the petitioners are not deprived of the land because of violation of any condition and since it is not also contemplated by the respondent authorities, all these orders put together only center around the issue regarding determination of the premium amount. The learned Collector has also rightly modified the order of the Deputy Collector by directing him to determine the premium with reference to the date of granting N.A. permission i.e. 29.03.1982 and not 1990 as was done by the Deputy Collector. The infirmity which was found in the order of the Deputy Collector was already cured by the Collector and pursuant to that order, the correct amount of premium is still to be determined. There is no necessity for this Court to interfere in the order of the Collector. The challenge against it has rightly been rejected by the learned

Secretary (Appeals).

25. The Court, therefore, while dismissing this petition directs the Assistant/Deputy Collector to determine the amount of premium with the help of Deputy Town Planner with reference to the date of granting N.A. Permission i.e. 29.03.1982, within a period of three months from the date of receipt of writ or certified copy of this judgment. The Court also makes it clear that it would be obligatory on the part of the petitioners to pay the amount of premium so determined, immediately on receipt of demand notice from the Collector. It is further clarified that while determining the amount of premium, reasonable opportunity of being heard be granted to the petitioners and/or their power of attorney holder who are pursuing this petition before this Court as it has come on record that the land in question was divided into sub-plots and different persons are holding those sub-plots. Though they are required to be heard in the matter, no separate notice is

required to be issued on them. The power of attorney holder is, therefore, directed to inform them to take care of their interests directly or make necessary submissions on their behalf when the notice for determination of the premium amount is issued on him. No grievance will subsequently be allowed to be raised that the amount of premium was determined without hearing them or in violation of the principles of natural justice.

26. Subject to the aforesaid direction and observation, this petition is accordingly disposed of without any order as to costs.

[K. A. PUJ, J.]

Savariya